appellant said but what the sergeant, whom I consider to be an independent witness, witness No. 2 for the plaintiff, had to say in this matter. The most important part of the evidence of Sgt. 7291, Mahmud bin Awang Kechik, in my view, is that relating to a tyre mark measuring 117' 6" which was admitted by both sides had been found on the grass verge on the Land Rover's side of the road, that is, on that side of the road on which the driver of the Land Rover belonging to the defendant company was travelling at that time. I consider that there can be little doubt that the tyre mark ending at a point where the Land Rover was found to have come to rest in the drain on its proper side of the road had been made by the Land Rover. That being the case I am of the view that the negligent party would be the driver of the motor car or the MG and in the circumstances I hold that the appeal should be allowed.

There are two points of law on which I feel I should comment. The first is a statement made in the judgment of the learned trial judge wherein he held that the doctrine of contributory negligence does not apply in this country. With that view I would respectfully disagree. The learned trial judge has clearly overlooked the provisions of section 12 of the Civil Law Ordinance, 1956. I must also disagree with the view which he held that in this case both sides had been equally negligent. As I said earlier independent evidence point to one fact; that the plaintiff/respondent was negligent. The other statement of law made by the learned trial judge on which I feel I should comment is that part of the judgment wherein he said that the contents of an agreed bundle of documents must be proved unless such contents are admitted by the other side. With respect, I say that where there is an agreed bundle of documents there is no need to prove these documents. This rule is too well established in law to be doubted.

I, therefore, give judgment in favour of the appellant/defendant and in respect of special damages, having considered the value of the Land Rover as is indicated in the exhibit at page 76 of the record and also taking into consideration the value of the Land Rover as scrap, I would award the appellant/defendant a sum of $2,000 as special damages. Only one item of general damage, I feel is worthy of consideration and that is the sum of $196 which I understand are the wages paid to the labourers of the appellant/defendant company during the period of their medical treatment. I would say that the other items of general damages were either not proved to the satisfaction of this court or were too remote to be worthy of consideration.

Costs in this court and in the court below will be awarded to the appellant. Deposit to be paid out to the appellant.

Barakbah L.P. and **Abdul Aziz J.** concurred.

Appeal allowed.

Solicitors: *Chang Min Tat; Wrigglesworth & Co.*

COMPTROLLER OF INCOME TAX v. A. CO. LTD.

[O.C.J. (Choor Singh J.) June 20, 1966]

[Singapore — Suit No. 881 of 1962, Summons-in-Chambers No. 995 of 1965]

Income Tax — Payment of income tax — Tax levied by comptroller — Objection against assessment — Application for leave to sign final judgment — R.S.C., O. XIV — Income Tax Ordinance (Cap. 166), s. 86.

The plaintiff had claimed the sum of $200,725 being the amount of income tax alleged to be due and payable by the defendant. Appearance was entered for the defendant and a statement of defence denying liability was filed. The plaintiff thereupon took out a summons-in-chambers for leave to enter final judgment under Order XIV of the Rules of the Supreme Court. The registrar after hearing both parties gave the plaintiff leave to enter final judgment for the sum claimed. On appeal, it was contended that there was a triable issue as the defendant claimed that the tax had not been levied in accordance with the provisions of section 43 of the Income Tax Ordinance.

Held: (1) once the Comptroller of Income Tax has made an assessment and issued a notice of assessment to a taxpayer calling upon him to pay the tax mentioned in the notice, the taxpayer is bound by law to pay such tax within one month even though he may be dissatisfied with the assessment;

(2) the provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance and in this case the registrar had rightly given the plaintiff leave to sign final judgment.

APPEAL FROM REGISTRAR.

Amarjit Singh Verick (Legal Officer) for the plaintiff/respondent.

K. S. Chung for the defendant/appellant.

Cur. Adv. Vult.

Choor Singh J.: This is an appeal against the decision of the registrar giving the plaintiff leave to sign final judgment against the defendant.

By a specially indorsed writ of summons issued on the 20th May, 1965, the plaintiff claimed from the defendant the sum of $200,725, being the amount of income tax alleged to be due and payable by the defendant under section 86 of the Income Tax Ordinance (Cap. 166) in respect of the years of assessment 1958, 1959 and 1960.

Appearance was entered for the defendant on the 9th June, 1965, and a statement of defence denying liability was filed on the 28th June, 1965. On the 6th July the plaintiff took out a summons in chambers for leave to enter final

judgment under Order XIV. The registrar after hearing both parties gave the plaintiff leave to enter final judgment for the sum claimed.

The first ground of appeal is that the claim of the plaintiff has not been verified by affidavit as required by Order XIV. Rule 1(1) of Order XIV reads as follows:—

"1. (1) Where the defendant appears to a writ of summons specially indorsed under Order III, r. 5, the plaintiff may, on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount so indorsed, together with interest (if any), or for the recovery of the immovable property (with or without rent or mesne profits), or for the delivery of a specific chattel, as the case may be, and costs."

The material portion of the affidavit filed by the plaintiff in support of his summons in chambers reads as follows:—

". . . . The defendants A. Co. Ltd. are justly and truly indebted to me, the abovenamed plaintiff in the sum of $200,725 and was so indebted at the commencement of this action. The particulars of the said claim appear by the indorsement on the writ of summons in this action. I verily believe that there is no defence to this action."

Counsel for the defendant submits that the affidavit must show what the cause of action is; that in this case the plaintiff's affidavit does not do so; that Order XIV must be strictly complied with and that as the plaintiff has not verified his cause of action, the registrar should not have granted leave to enter final judgment.

In my view, any person reading the affidavit of the plaintiff and the indorsement on the writ of summons would know quite clearly what the plaintiff was claiming. The plaintiff has, in my opinion, verified his cause of action within the meaning of rule 1(1) of Order XIV and this ground of appeal therefore fails.

The second ground of appeal is that there is in this case a triable issue and the registrar should therefore have granted the defendant leave to defend. Counsel's argument is as follows. The defendant has a good defence, namely, that the tax claimed has not been levied in accordance with the provisions of section 43 of the Ordinance. The plaintiff relies on section 86 of the Ordinance. He can invoke section 86 only when the court is satisfied that the tax claimed was levied in accordance with section 43. When a defendant alleges that the tax has not been levied in accordance with section 43, there is a triable issue. Section 43 of the Ordinance provides that there shall be levied and paid for each year of assessment upon the chargeable income of every company tax at the rate of forty per centum on every dollar of the chargeable income thereof. To ascertain the chargeable income of a company the comptroller must first ascertain the statutory income of the company in accordance with the provisions of section 35 of the Ordinance. Having ascertained the statutory income, the comptroller must then ascertain the assessable income in accordance with the provisions of section 37 of the Ordinance. And it is only then that the chargeable income can be ascertained as provided by section 38 of the Ordinance. The chargeable income of the defendant for the relevant years has not been computed in accordance with the aforesaid provisions of the Ordinance and accordingly the tax levied cannot be said to have been levied in accordance with the provisions of section 43 of the Ordinance. The plaintiff is bound by the principles of Order XIV as decided by the cases and cannot take himself out of Order XIV just because his claim is in respect of income tax. In proceedings under Order XIV, where a question of fact or law is raised a defendant is always granted leave to defend. The defendant having raised important questions of law and fact, is entitled to leave to defend this action.

Counsel for the plaintiff submits that the plaintiff's claim is for recovery of income tax under section 86 of the Ordinance; that sections 86 and 90 give the plaintiff a complete cause of action notwithstanding appeal or objection by the defendant; that section 86 is designed to overcome the difficulty of tax collection where an objection is lodged or an appeal is pending; that the expression "levied in accordance with section 42 or 43" in section 86 means levied according to the rates laid down in those sections; that the words "section 42 or 43" in that context are not linked with the manner of levying income tax; that the provisions of those sections merely indicate the rates at which tax can be levied; that there is a distinction between "tax" and "assessment"; that in spite of objections to the assessment, such tax is payable; that in this case the certificate of income tax issued under section 90(3) of the Ordinance was produced before the registrar and the plaintiff relied on that certificate; that the merits of the assessment cannot be set up as a defence in an application under Order XIV; that section 90(3) of the Ordinance gives the court authority to sign judgment; that the plaintiff's claim is in respect of a statutory debt and that the learned registrar's decision granting the plaintiff leave to enter final judgment is correct.

Section 86 of the Income Tax Ordinance reads as follows:—

"Subject to the provisions of section 91 of this Ordinance, tax for any year of assessment levied in accordance with the provisions of section 42 or 43 of this Ordinance shall, notwithstanding any objection or appeal against the assessment on which such tax is levied, be payable at the place stated in the notice given

under section 76 of this Ordinance within one month after the service of such notice:"

In my view, the levying of tax must be distinguished from the assessment of income. They are two entirely different processes. The tax in the case of a limited company, has to be levied at the rate laid down in section 43 of the Ordinance. The assessment of the company's income has to be made in accordance with the provisions of sections 35, 37 and 38 of the Ordinance. And section 86 states quite clearly that tax must be paid notwithstanding any objection or appeal against the assessment on which such tax is levied. It follows therefore that the expression "tax levied in accordance with the provisions of section 42 or 43" means tax levied at the rates laid down in either of those two sections. In the present case the defendant's complaint is not in respect of the rate at which the tax has been levied; it is against the assessment of his income.

In my opinion, once the Comptroller of Income Tax has made an assessment and issued a notice of assesment to a tax payer calling upon him to pay the tax mentioned in the notice, the tax payer is bound by law to pay such tax within one month even though he may be dissatisfied with the assessment. Whether the assessment is right or wrong, the tax must be paid notwithstanding any objection or appeal. The scheme of the Income Tax Ordinance is that if any person disputes the assessment, he may apply to the comptroller to review and revise the assessment made upon him. If the comptroller refuses to amend the assessment, the aggrieved tax payer may appeal to the Board of Review appointed under section 78 of the Ordinance and the board may, after hearing the appeal, confirm, reduce, increase or annul the assessment or make such order thereon as to it may seem fit. The tax payer or the comptroller may then appeal to the High Court from the decision of the board upon any question of law or mixed law and fact. A tax payer has no right to by-pass the Board of Review and take his complaint direct to court. And when the Comptroller of Income Tax sues a tax payer to recover tax due under a notice of assessment, the tax payer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the Ordinance. Such a complaint must in the first instance be laid before the Board of Review. The provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done every unwilling tax payer will refuse to pay tax and when sued in court, will challenge the merits of the assessment, thus causing considerable delay in the collection of the tax. The proper course for every aggrieved tax payer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review.

In my opinion, the learned registrar came to a correct decision in law. The appeal is accordingly dismissed and the order made by the registrar is affirmed. The defendant is ordered to pay to the plaintiff the costs of the proceedings before the registrar and the costs of this appeal as taxed.

Appeal dismissed.

Solicitors: *Chung & Co.*

MOHAMED BIN MYDDIN v. TEO MEK YOK

[F.C. (Barakbah L.P., Abdul Aziz and Wan Suleiman JJ.) June 22, 1966]

[Kota Bharu — F.C. Civil Appeal No. 14 of 1966]

Landlord and Tenant — Controlled premises — Renovation or re-erection — Burden of proof — Evidence Ordinance, 1950, s. 103 — Control of Rent Ordinance, 1956.

The plaintiff (respondent herein) claimed possession of a shop-house let to the defendant (appellant). The shop-house was originally erected prior to 1948 but there was either a renovation or a re-erection of the premises in 1953. The plaintiff claimed that the premises were rebuilt in 1953 and was not protected by the Control of Rent Ordinance. The defendant claimed that the premises were merely renovated in 1953 and that the premises were erected prior to 1948 and that it was protected by the Ordinance. The learned president held that the burden of proof that the premises were not controlled premises was on the plaintiff. After hearing the parties he came to the conclusion that the premises were rebuilt in 1953 and that the premises were not protected. The defendant appealed to the High Court and then to the Federal Court.

Held: the learned president was wrong in holding that the burden of proving that the premises were not controlled premises was on the plaintiff. It was the defendant who alleged that the premises were protected and the burden of proof was on him, and the learned president should have called upon him to begin.

Case referred to:—

(1) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

FEDERAL COURT.

S. P. Seenivasagam for the appellant.

W. L. Wrigglesworth for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is an appeal arising out of the decision of the president, sessions court, Kota Bharu given on the 6th of July 1965 giving judgment for the plaintiff for vacant possession of a shophouse at Tanah Merah and for the payment of double rent and costs. It is common ground that the appellant became the tenant of the respondent upon the purchase of the land on which stood a shop tenanted by the appellant in 1950. There is no dispute that the old shop was erected prior to 1948 and that in